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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/622,510

10/19/2000

Rachel J. Painter

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23487 7590 02/28/2008
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EXAMINER

GEORGE, KONATA M

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

02/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/622,510	Applicant(s) PAINTER ET AL.	
	Examiner KONATA M. GEORGE	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5, 7-13, 21-24 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5, 7-13, 21-24 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/3/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 3-5, 7-13, 21-24 and 26 are pending in this application.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on October 3, 2007 was noted and the submission is in compliance with the provisions of 37 CFR 1.97.

Accordingly, the examiner has considered the information disclosure statement.

Action Summary

The rejection of claims 3-5, 7-13, 21-24 and 26 under 35 U.S.C. 112, second paragraph, as being indefinite is being maintained for the reasons stated in the office action dated August 6, 2007.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-5, 7-13, 21-14 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants in the claims recite the phrase "derivatives". Webster's Dictionary defines a derivative as "a substance derived from, or of such composition and properties, that it may be considered as

derived from, another substance by chemical change, esp. by the substitution of one or more elements or radicals". Based on this definition it is unclear what the derivative is.

Response to Arguments

Applicant's arguments filed October 8, 2007 have been fully considered but they are not persuasive.

The examiner is withdrawing the rejection with respect to cholesterol derivatives, as the applicant has defined it in the claims as lanosterol. However, the rejection is being maintained with respect to oil-soluble derivatives. Applicant argues that in US patents 5,891,450 and 4,536,405 disclose examples of these derivatives. While examples may be disclosed in those patents, the claims of the instant invention are silent with respect to these derivatives. Furthermore, a derivative could encompass a salt, hydrate, ester, etc. Therefore, it is considered to the examiner as indefinite.

Conclusion

Claims 3-5, 7-13, 21-24 and 26 remain rejected.

Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-

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272-0613. The examiner can normally be reached from 8:00AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Konata M. George
Patent Examiner
Art Unit 1616

/Mina Haghighatian/

For Johann Richter
Supervisory Patent Examiner
February 20, 2008